

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES SURETY COMPANY *

Plaintiff * Civil Action No.: 05-675 GMS

v. *

M. MILLER TRUCKING, et al. *

Defendants *

**MOTION TO DISCHARGE PLAINTIFF IN INTERPLEADER
AND PETITION FOR ATTORNEYS FEES AND COSTS**

United States Surety Company, Plaintiff, by and through its counsel, Donald R. Kinsley, Esq., Marks, O'Neill, O'Brien & Courtney, moves this Court for an order discharging it from any further liability in this matter or in connection with claims interpleaded in this action and for an order awarding United States Surety Company its costs and reasonable attorney's fees incurred in connection with this action.

Grounds for Relief

United States Surety Company should be discharged from this action and awarded costs and fees because:

1. As established by the pleadings in this matter, United States Surety Company is a completely disinterested stakeholder in this matter. It has been the subject of multiple adverse claims concerning the sum of \$10,000.00, representing a surety bond.

2. Pursuant to the provisions of 28 U.S.C. § 1335(a), United States Surety Company has brought this action for interpleader, requiring and permitting all of the adverse claimants to this sum to assert and resolve their claims in a single proceeding.

3. United States Surety Company deposited the entirety of the disputed sum into the registry of the Court, pursuant to a Court Order, on or about October 11, 2005.

4. United States Surety Company has no further interest in the disposition of the sum deposited with the court, including which party, if any, recovers all or any portion of that sum,

and has no other obligations of any kind to the parties asserting adverse claims to the sum on deposit.

5. To date, only four Defendants have filed answers to Plaintiff's Interpleader Complaint:

<u>Defendant</u>	<u>Amount claimed in Answer</u>
Nelson Freight Service (Docket #15)	no amount set forth in Answer
Summit Transportation Sys., Inc. (Docket #63)	no amount set forth in Answer
Wilkins Trucking (Docket #64)	handwritten note "I am not able to appear"
Croft, LLC – (Docket #65)	\$500.00

6. The following Defendants have agreed to Stipulations of Dismissal with prejudice stating each does not assert any claim to the posted bond:

Acme Trucking (Docket #68)
Louisiana Transportation, Inc. (Docket #69)
M. Miller Trucking (Docket #70)

7. The Plaintiffs were not able to serve, and the Court dismissed the following defendants from this matter as of March 21, 2006 (Docket #77):

BBB Trucking, Inc. (identified as "BB Trucking, Inc." in Order, docket #77)
C-Line, Inc.
Hyde Trucking Co.
James E. Ooten
Scotland Transfer Co.
Service First Transport, Inc.
Trans-Link, Inc.

8. On March 20, Triglia Express, Inc., filed a Notice of Settlement to which were attached 55 releases (Docket #76).

9. The attached Exhibit A sets forth the status of the outstanding claims and pleadings filed by the defendants.

10. Pursuant to the authority of 28 U.S.C. § 2361, the court should discharge United States Surety Company "from further liability" in this matter.

PETITION FOR ATTORNEYS FEES AND COSTS

11. Plaintiff seeks reimbursement of \$10,126.01 in direct costs and fees it was required to expend to ensure the resolution of this action, for expenses to Marks, O'Neill, O'Brien & Courtney, P.C., in preparing, filing and representing Plaintiff in this matter, as set forth in Exhibit B. Plaintiff has further incurred other indirect costs and fees related to this matter, that are not set forth in this petition or exhibit.

12. In connection with this discharge, United States Surety Company should be awarded its costs and reasonable attorney's fees for bringing the interpleader proceeding and permitting all of the parties to resolve their adverse claims in a single proceeding.

13. The Affidavit of Donald R. Kinsley, Esq., of Marks, O'Neill, O'Brien & Courtney, P.C. sets forth the amount of costs and reasonable attorney's fees incurred on behalf of United States Surety Company through Marks, O'Neill, O'Brien & Courtney, P.C in connection with this action, see Exhibit B.

Record on Motion

This motion is based on this document and on the Supporting Affidavit of Donald R. Kinsley and served with this document, on the Certificate of Service accompanying these motion papers, on all of the pleadings and papers on file in this action, and on whatever argument and evidence may be allowed at a hearing of this motion.

WHEREFORE, Plaintiff hereby requests the Court grant its Motion and enter the attached proposed Orders.

/s/ Donald R. Kinsley
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Dated: April 20, 2006